745.

SUPREME COURT OF THE UNITED STATES.

No. 154.

BENNET R. TRULY, COMPLAINANT AND APPELLANT,

vs.

MOSES WANZER, JABEZ HARRISON AND JOHN R. NICHOLSON.

APPEAL FROM THE CIRCUIT COURT U. S. FOR MISSISSIPPI, S. D.

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J. & G. S. Gideon, printers.

In chancery, between

BENNET R. TRULY, complainant,
vs.
WANZER and HARRISON, et al., defendants.

Pleas before the honorable Peter V. Daniel, presiding judge of the circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and forty-four.

Be it remembered that heretofore, to wit, on the 19th day of May, A. D. 1840, came Bennet R. Truly, who is a citizen of the State of Mississippi, complainant, by Rucks and Yergers, his solicitors, into the clerk's office of the court aforesaid, and filed his certain bill of complaint against Wanzer and Harrison, et al., defendants, which said bill is in the words and figures, to wit:

UNITED STATES OF AMERICA:

To the honorable the judges of the federal court sitting in Jackson, Mississippi, 9th judicial circuit:

Bennet R. Truly, a citizen of Madison county, in the State aforesaid, respectfully begs leave to show your honors, that some time in the year 1836, he thinks in December, he purchased five negroes, to wit: Sam, Le, Alexander, Peter and Mary, of one John R. Hubert, who was then a citizen of this State, but is now dead. He died in Texas, and has no administrator known to your orator. These negroes had just been brought into this State for sale from Alabama or Georgia, it is believed, by one John R. Nicholson, contrary to the consitution of the State of Mississippi. Some agreement, it seems, had been made between Herbert and Nicholson, respecting these negroes, either before or after they were brought into this State; for Herbert was the ostensible party in selling them to your orator. These negroes were purchased by your orator, upon a credit, for which he executed his two promissory notes for the sum of $3,575 each, copies of which are herewith filed, marked A and B, and are prayed to be taken as part of this bill; the first one, exhibit A, bears date the 7th February, 1837, and payable 12 months after the first day of March, 1837, is signed by Dennis Burns and William Sutherland, who were securities for your orator in that note, and is made payable to John R. Nicholson or bearer, but the name of the person to whom the same was to be made payable was not inserted at the time said note was signed, but was left blank, and was afterwards filled up with the name of said John R. Nicholson, and your orator never knew, until he was afterwards sued upon this note, with whose name the blank had been filled. Exhibit B bears date the first February, 1837, and was made payable to the order of A. W. Robinson, and by him and one Wm.

O. Aldridge is endorsed in blank, and payable at the banking house of the Mississippi and Alabama Railroad Company at Brandon, to bear ten per cent. interest after due, stating on the face thereof to be for a loan of money, but this was not true in fact; but this was not objected to by your orator, as said Herbert stated that his object in writing it that way was, to enable him to get the same discounted in said bank. Your orator took said Herbert's bill of sale for said negroes, but the consideration therein stated is less than the amount of said two notes, and the consideration stated in the bill of sale is what the negroes were estimated to be worth at the time, in cash, and then interest was added for the time the notes had to run to maturity, which makes the difference between the amount of consideration stated in the bill of sale and the amount of the notes. Your orator cannot state the date of said bill of sale, as it is not present, but the same shall be filed in this cause on or before the final hearing, as the court may direct. On the note payable to John R. Nicholson, your orator has been sued in this honorable court, and on or about the ' day of June, 1838, judgment was rendered thereon against your orator, in favor of said Nicholson, for about the sum of $3,646 50, which judgment your orator has paid off. The other note, exhibit B, seems to have been under the control of said Herbert, who has become involved and indeed insolvent, and one Josiah Bonner being his endorser or security, said Herbert paid the said notes in the hands of one Hamilton McCauley, as indemnity for said Bonner as his security as aforesaid. Said last mentioned notes, with some others on other persons were sent, in the year 1837, by said Herbert, in a letter to said McCauley, in which letter said Herbert instructed said McCauley to collect this note with the others, and apply the proceeds, when collected, to the payment of a bill of exchange, drawn by said Herbert with said Bonner and others, his securities, for the sum of about thirty-seven hundred and nine dollars and fifty cents, upon Bogart and Hooper, and by them accepted; upon which bill suit had been commenced, as your orator had been informed and believed, at the May term, 1837, of the circuit court of the United States, at Jackson, in favor of the United States Bank against Herbert and Bonner, and upon which judgment was rendered at the November term of said court, 1837, which judgment, as your orator was informed and believed, had been paid off by said Bonner's security as aforesaid, at the May term, 1839, of this honorable court. Your orator was summoned as a garnishee, at the suit of Wanzer and Harrison vs. John R. Herbert and others, and on the 6th day of May, 1839, he filed his answer in said cause, to which your orator begs leave to refer; your orator was informed and believed, that final judgment had not been rendered against him in said cause, and that he would be required again to appear before the court, and your orator charges that such was the understanding of the clerk at the time; and it appears from the rough minutes of the court, that the honorable court ordered judgment to be entered against your orator according to his answer, which your orator charges did not authorize a judgment final against him for the amount of said note, but he is advised that it was only intended by

the court to make such order therein, as would give your orator an opportunity of availing himself of any legal defence to which he might, by the laws be entitled; but the clerk misunderstanding the order of the honorable court at the time, has entered a final judgment against your orator for the full amount of said note, in favor of said Wanzer and Harrison, and an execution has been issued thereon, and by the marshal levied upon the property of your orator, and he has been compelled to give a forthcoming bond for the delivery of the property, &c., which your orator charges is illegal, oppressive and unjust.

Your orator charges that said negroes were brought into this State since May, 1833, for the purpose of sale and merchandise, contrary to the constitution; and your orator shows, that at the time he filed his answer to said garnishment summons, he knew the fact that the negroes, for which these notes had been given, had been brought to this State for sale as merchandise, contrary to the constitution; but he was not advised, however, that it was necessary, in any manner, to set up or waive that ground of defence, although your orator never did, either directly or indirectly, waive, or in any manner agree to waive, that ground of defence; yet he had not, until lately, intended to avail himself of it. He has lately been informed, and believes the information to be true, and so charges, that the said John R. Nicholson was guardian for certain minor children, his younger brothers and sisters, to whom alone the very same negroes belonged, and that said Nicholson got possession of them as guardian, ran them off to this State, and sold them as aforesaid, and that said negroes are now the property of said minors, who are the younger brothers and sisters of said Nicholson, and the minor children of Nicholson, deceased. Your orator is advised, and so charges, that he is liable to be called on for said negroes, by said minor children, and may be compelled to account for them at any time, and he is apprehensive that even if he should not be called upon to account for said negroes soon, he may be at some distant day; and inasmuch as your orator may, by the lapse of time, be deprived of many of the facilities which he now has, in favoring the rights of said minors in this suit as advised, he begs leave to set up and avail himself of all the grounds of defence to the notes aforesaid, which he is entitled to by the constitution and laws of this State.

Your orator charges, that the notes given by your orator for said negroes, and upon which judgments have been rendered as aforesaid, were given for the consideration of the negroes aforesaid, brought into this State since May, 1833, as merchandise and for sale, contrary to the constitution of the State, and that said notes are therefore absolutely void, and ought so to be declared by this honorable court.

Your orator further charges, that the negroes for which said notes were given, were not the property of the said John R. Nicholson nor of said Herbert, but, on the contrary, were the property of said minor children of the said Nicholson, deceased, which was unknown to your orator at the time he purchased said negroes, and was not known to him until since the rendition of the judgment aforesaid, upon the garnishment sum-

mons aforesaid. Your orator insists that he ought not be precluded or estopped from setting up, in a court of equity, either of the defences herein claimed, against the note of which exhibit B is a copy, on account or by reason of any proceedings upon said garnishment. Your orator also charges, that the note, of which exhibit A is a copy, and the judgment and all the proceedings had thereon, are absolutely void and ought so to be declared by your honorable court, as well on account of the fraud practised upon your orator by said Nicholson, in selling or procuring to be sold to your orator, the negroes aforesaid, as on account of the invalidity of the contract of the sale and purchase of the said negroes, by reason of the constitution prohibition aforesaid.

Your orator further charges, that the note aforesaid, of which exhibit B is a copy, was obtained by and through the fraud of said Nicholson, as well as against the constitution of this State, and therefore void; and that the judgment on the garnishment aforesaid, and the execution issued on said judgment, and likewise the forthcoming bond, executed by your orator as aforesaid, and all the proceedings thereon, from first to last, are void, and ought so to be declared by this honorable court.

All which actings and doings of the said John R. Nicholson, and the said Moses Wanzer and Jabez Harrison are contrary to equity and good conscience, and tend manifestly to injure, oppress, and defraud your orator.

The premises considered, your orator prays that said John R. Nicholson, who is a non-resident of this State, and resides in the State of Arkansas, and the said Moses Wanzer and Jabez Harrison, who are also non-residents, and whose residence is unknown to your orator, may be made defendants to this bill; that they be compelled, upon their corporal oath, full, true, direct, and perfect answers to make, to all and singular the charges and allegations in this bill contained, in as full and ample a manner as if the same were here again repeated in the form of interrogatories.

Your orator further prays, that by a decree of your honorable court, the original notes, of which exhibits A and B are copies, and the judgments aforesaid rendered thereon respectively, and all the proceedings aforesaid had on them and each of them, be declared null and void, and of no effect; and that said original notes, executed by your orator for said negroes, and the forthcoming bond aforesaid, executed by your orator and John H. Truly, security, for the delivery of the property levied on by virtue of the execution issued upon said judgment in said garnishment case, be delivered up and cancelled; and that said John R. Nicholson, by decree of your honorable court, be compelled to refund to your orator the amount paid by your orator on the judgment obtained by him against your orator, in your honorable court, upon the note of which exhibit A is a copy; and your orator prays, that in the meantime an injunction be granted to your orator to stay all further proceedings on the execution issued upon said judgment on said garnishment and said forthcoming bond; and grant to your orator all such other and further relief in the premises as the nature of his case may require, and to the honora-

the court to make such order therein, as would give your orator an opportunity of availing himself of any legal defence to which he might, by the laws be entitled; but the clerk misunderstanding the order of the honorable court at the time, has entered a final judgment against your orator for the full amount of said note, in favor of said Wanzer and Harrison, and an execution has been issued thereon, and by the marshal levied upon the property of your orator, and he has been compelled to give a forthcoming bond for the delivery of the property, &c., which your orator charges is illegal, oppressive and unjust.

Your orator charges that said negroes were brought into this State since May, 1833, for the purpose of sale and merchandise, contrary to the constitution; and your orator shows, that at the time he filed his answer to said garnishment summons, he knew the fact that the negroes, for which these notes had been given, had been brought to this State for sale as merchandise, contrary to the constitution; but he was not advised, however, that it was necessary, in any manner, to set up or waive that ground of defence, although your orator never did, either directly or indirectly, waive, or in any manner agree to waive, that ground of defence; yet he had not, until lately, intended to avail himself of it. He has lately been informed, and believes the information to be true, and so charges, that the said John R. Nicholson was guardian for certain minor children, his younger brothers and sisters, to whom alone the very same negroes belonged, and that said Nicholson got possession of them as guardian, ran them off to this State, and sold them as aforesaid, and that said negroes are now the property of said minors, who are the younger brothers and sisters of said Nicholson, and the minor children of Nicholson, deceased. Your orator is advised, and so charges, that he is liable to be called on for said negroes, by said minor children, and may be compelled to account for them at any time, and he is apprehensive that even if he should not be called upon to account for said negroes soon, he may be at some distant day; and inasmuch as your orator may, by the lapse of time, be deprived of many of the facilities which he now has, in favoring the rights of said minors in this suit as advised, he begs leave to set up and avail himself of all the grounds of defence to the notes aforesaid, which he is entitled to by the constitution and laws of this State.

Your orator charges, that the notes given by your orator for said negroes, and upon which judgments have been rendered as aforesaid, were given for the consideration of the negroes aforesaid, brought into this State since May, 1833, as merchandise and for sale, contrary to the constitution of the State, and that said notes are therefore absolutely void, and ought so to be declared by this honorable court.

Your orator further charges, that the negroes for which said notes were given, were not the property of the said John R. Nicholson nor of said Herbert, but, on the contrary, were the property of said minor children of the said Nicholson, deceased, which was unknown to your orator at the time he purchased said negroes, and was not known to him until since the rendition of the judgment aforesaid, upon the garnishment sum-

mons aforesaid. Your orator insists that he ought not be precluded or estopped from setting up, in a court of equity, either of the defences herein claimed, against the note of which exhibit B is a copy, on account or by reason of any proceedings upon said garnishment. Your orator also charges, that the note, of which exhibit A is a copy, and the judgment and all the proceedings had thereon, are absolutely void and ought so to be declared by your honorable court, as well on account of the fraud practised upon your orator by said Nicholson, in selling or procuring to be sold to your orator, the negroes aforesaid, as on account of the invalidity of the contract of the sale and purchase of the said negroes, by reason of the constitution prohibition aforesaid.

Your orator further charges, that the note aforesaid, of which exhibit B is a copy, was obtained by and through the fraud of said Nicholson, as well as against the constitution of this State, and therefore void; and that the judgment on the garnishment aforesaid, and the execution issued on said judgment, and likewise the forthcoming bond, executed by your orator as aforesaid, and all the proceedings thereon, from first to last, are void, and ought so to be declared by this honorable court.

All which actings and doings of the said John R. Nicholson, and the said Moses Wanzer and Jabez Harrison are contrary to equity and good conscience, and tend manifestly to injure, oppress, and defraud your orator.

The premises considered, your orator prays that said John R. Nicholson, who is a non-resident of this State, and resides in the State of Arkansas, and the said Moses Wanzer and Jabez Harrison, who are also non-residents, and whose residence is unknown to your orator, may be made defendants to this bill; that they be compelled, upon their corporal oath, full, true, direct, and perfect answers to make, to all and singular the charges and allegations in this bill contained, in as full and ample a manner as if the same were here again repeated in the form of interrogatories.

Your orator further prays, that by a decree of your honorable court, the original notes, of which exhibits A and B are copies, and the judgments aforesaid rendered thereon respectively, and all the proceedings aforesaid had on them and each of them, be declared null and void, and of no effect; and that said original notes, executed by your orator for said negroes, and the forthcoming bond aforesaid, executed by your orator and John H. Truly, security, for the delivery of the property levied on by virtue of the execution issued upon said judgment in said garnishment case, be delivered up and cancelled; and that said John R. Nicholson, by decree of your honorable court, be compelled to refund to your orator the amount paid by your orator on the judgment obtained by him against your orator, in your honorable court, upon the note of which exhibit A is a copy; and your orator prays, that in the meantime an injunction be granted to your orator to stay all further proceedings on the execution issued upon said judgment on said garnishment and said forthcoming bond; and grant to your orator all such other and further relief in the premises as the nature of his case may require, and to the honora-

ble court may seem right, and to equity belongs, &c. That process of subpœna and injunction may issue, &c.; and that publication be made for said non-resident defendants, &c.; and as in duty bound he will ever pray.

RUCKS & YERGER,
HUBBARD & OTT,
Solicitors for complainant.

THE UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, May term, 1840.

Personally appeared, in open court, Bennet R. Truly, the complainant in the foregoing bill, and made oath that the facts stated in the foregoing bill as of his own knowledge, are true, and those facts stated from the information of others, he believes to be true.

B. R. TRULY.

Sworn and subscribed in open court, May 7th, 1840.

WM. BURNS, *Clerk.*

Exhibit A.

$3,575. MADISONVILLE, *February* 7, 1837.

Twelve months after the first day of March next, we jointly and severally promise to pay, without defalcation, to John R. Nicholson or order, three thousand five hundred and seventy-five dollars, for value received.

B. R. TRULY,
DENNIS BURNS,
WILLIAM SUTHERLAND.

Exhibit B.

$3,575 $\frac{00}{100}$. BRANDON, *Mi., Feb'y 1st*, 1837.

Twelve months after date, I promise to pay to the order of A. W. Robinson, three thousand five hundred and seventy-five dollars, value received, negotiable and payable at the banking house of the Mississippi and Alabama Railroad Company, at Brandon, with ten per cent. interest after due, until paid, it being for a bona fide loan of money.

B. R. TRULY.

The drawer will acknowledge notice at Madisonville.
The 1st endorser will acknowledge notice at Levingston.
The 2d endorser will acknowledge notice do.
Endorsements on exhibit B—A. W. Robinson, Wm. O. Aldridge.

And at the said May term, A. D. 1840, of the court first aforesaid, to wit, on the 19th day of May, A. D. 1840, the following order was made and entered on the minutes of said court, to wit: It is ordered, that an injunction by granted the complainant herein, according to the prayer of his bill filed, on his executing bond, in double the amount of the judgment at law, with good security, to be approved by the clerk, within forty days from this date, conditioned according to law.

Injunction bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Bennet R. Truly, John H. Truly, and Francis A. Roop and Samuel Truly, are held and firmly bound unto Moses Wanzer and Jabez Harrison, partners under the name of Wanzer and Harrison, in the just and full sum of seven thousand three hundred dollars, lawful money of the United States, to be paid to the said Wanzer and Harrison, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the 29th day of May, A. D. 1840.

The condition of this obligation is such, that whereas the above bound Bennet R. Truly has obtained from the honorable the circuit court of the United States for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain judgment, and the forthcoming bond given on the same, in said court, against said Truly, at the suit of the said Wanzer and Harrison in a case of garnishment. Now, if the said Bennet R. Truly, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due and to become due to the said Wanzer and Harrison, the plaintiffs in the said judgment, and also all such costs and damages as shall be awarded against them, then this obligation to be void, otherwise to be and remain in full force and virtue.

B. R. TRULY, [SEAL.]
JOHN H. TRULY, [SEAL.]
FRANCIS A. ROOP, [SEAL.]
SAMUEL M. TRULY. [SEAL.]

Sealed and delivered in presence of—
HENRY WHITE, *J. P.*

Endorsement filed and approved, June 18th, 1840.
WM. BURNS, *Clerk.*

Whereupon the following process of injunction and subpœna issued from the clerk's office of the court aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
So. district of Mississippi, ss:

The President of the United States to Moses Wanzer and Jabez Harrison, their counsellors, attorneys and agents, greeting:

Whereas it hath been represented to us in our circuit court, for the ninth circuit and southern district of Mississippi in chancery sitting, on the part of Bennet R. Truly, complainant, that he hath lately exhibited his bill of complaint against you, Moses Wanzer and Jabez Harrison, et al., defendants, to be relieved touching the matters in said bill contained; we, therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin and command you, the said Moses

Wanzer and Jabez Harrison, your counsellors, attorneys and agents, under the penalty of two hundred dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from proceeding to collect a certain judgment, in our said court, against the said Bennet R. Truly and his surety, to a forthcoming bond, John H. Truly, in your favor, and from any further proceedings against the said complainant touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in May,
[L. S.] A. D. one thousand eight hundred and forty, and the sixty-fourth year of the independence of the United States.

To the marshal of the so. dist. of Miss.

Issued the 18th day of June, A. D. 1840.

WM. BURNS, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States to Moses Wanzer and Jabez Harrison and John R. Nicholson, greeting:

For certain causes offered before us in our circuit court for the southern district of Mississippi, setting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at the circuit court, in and for said district, setting in chancery, to be held at the town of Jackson, on the first Monday of November, 1840, to answer to a bill of complaint exhibited against you, by Bennet R. Truly, complainant, in our said court, and further to do and receive what our said court shall consider in this behalf.

Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in May,
[L. S.] A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

Issued the 30th day of May, A. D. 1840.

WM. BURNS, *Clerk.*
Pr. GEO. W. MILLER, *D. C.*

Marshal's return—Def'ts not be found.

WM. M. GWINN, *Marshal.*
Pr. F. S. HUNT, *Dep.*

The demurrer of Wanzer and Harrison and John R. Nicholson, the defendants to the bill of complaint of Bennet R. Truly, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained, to be true, in such manner or form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for causes of demurrer show, that the said complainant has not, by his said bill,

made such case as entitles him, in a court of equity, to any discovery from these defendants respectively, or any of them, or to any relief against, as to the matters contained in said bill, or any of such matters; and that any discovery which can be made by these defendants or any of them, touching the matters complained of in said bill, or any of them, cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by said bill, nor entitle the said complainant to any relief in the court touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill, and they pray to be hence dismissed, with their reasonable costs in this behalf expended.

BUCKNER & STEWART,
For defendants.

Joinder in demurrer in short, by consent.

RUCKS & YERGER,
For complainant.

And afterwards, to wit, at the November term of the court first aforesaid, to wit, on the 11th day of Nov'r, A. D. 1843, until which time this cause was legally continued, came the parties aforesaid, by their respective solicitors, and the said defendants, by their solicitors, moved the court for a rule on complainant for better security on the injunction bond, or the injunction to be dissolved, upon the following affidavit filed, to wit:

Collin Pearce states, that Francis A. Roop, who is one of the sureties to the injunction bond given in this case, is insolvent and has removed from the State of Mississippi, and now lives in the State of Maryland, as he is informed and verily believes. That he is informed and believes, that Samuel M. Truly is very poor, and has no visible property. He further states, that John H. Truly, the other security in this case, was complainant's security on the forthcoming bond, that was given in the judgment at law, which by the bill is enjoined.

COLLIN PEARCE.

Sworn and subscribed in open court, Nov'r 11, 1843.

WM. H. BROWN, *Clerk.*

And at the said November term of the court aforesaid, to wit, on the 22d day of November, A. D. 1843, the said motion being fully argued and heard, and now understood by the court, it is ordered by the court, that better and sufficient security be filed by the complainants, or that they satisfy the clerk of the sufficiency of the present security, within sixty days from this date, or that the injunction stand dissolved.

And then the cause was continued until the next term.

Injunction bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Bennet R. Truly, John H. Truly and Alfred C. Downs, are held and firmly bound unto Moses Wanzer and Jabez Harrison, partners under the name of Wanzer and Harrison, in the just and full sum of seven thousand three hundred dollars, lawful money of the United States, to be paid to the said Wanzer and Harrison, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the 19th day of January, A. D. 1844.

The condition of this obligation is such, that whereas the above bound Bennet R. Truly has obtained from the honorable the circuit court of the United States, for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain judgment, and the forthcoming bond given on the same, in said court, against the said Bennet R. Truly; judgment rendered on the 15th November, 1839, for $3,575, together with interest and costs. Bond taken and forfeited with John H. Truly as security, on the fourth day of May, A. D. 1840, at the suit of the said Wanzer and Harrison in a case of garnishment.

Now, if the said Bennet R. Truly, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due and to become due to the said Wanzer and Harrison, partners as aforesaid, the plaintiffs in the said judgment, and also all such costs and damages as shall be awarded against him, then this obligation to be void, otherwise to be and remain in full force and virtue.

B. R. TRULY, [SEAL.]
JOHN H. TRULY, [SEAL.]
A. C. DOWNS. [SEAL.]

(Endorsement.)

UNITED STATES OF AMERICA,
Southern district of Mississippi:
Circuit court U. S.

Personally appeared before me, the undersigned clerk of said court, Alfred C Downs, the security on the within bond, who made oath that after the payment of all his debts and liabilities, security or otherwise, he is worth the amount of the penalty of the within bond, $7,300.

Signed, A. C. DOWNS.

Sworn to and subscribed, this 19th day of January, A. D. 1844.
WM. H. BROWN, *Clk.*

Approved, January 19th, 1844. WM. H. BROWN, *Clk.*

And now, at this time, to wit, at the May term of the court first aforesaid, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-four, this cause coming on to be heard

before the honorable Peter V. Daniel, the presiding judge, on the demurrer of the defendants to the bill of complaint herein, and the counsel for the parties being heard, and the several matters duly considered, his honor doth adjudge and decree, that the demurrer herein be sustained, and the said bill of complaint be, and the same is hereby dismissed, at the costs of the said complainant.

Signed, P. V. DANIEL.

Appeal prayed to the Supreme Court of the United States, which is granted, upon the complainant entering into bond, with good and sufficient security, to be approved by the clerk of this court, in a penalty of $7,300, conditioned according to law, within sixty days from this date.

Appeal bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Bennet R. Truly, Thomas Rull, and John H. Truly, are held and firmly bound unto Moses Wanzer and Jabez Harrison, under the firm of Wanzer and Harrison, in the just and full sum of seven thousand three hundred dollars, lawful money of the United States of America, to be paid to the said Wanzer and Harrison, their lawful attorney, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 16th day of July, A. D. one thousand eight hundred and forty-four.

The condition of this obligation is such, that whereas, at the term of the circuit court of the United States, in and for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1844, a final decree was rendered by said court in favor of the said Wanzer and Harrison against the said Bennet R. Truly, dismissing a bill and dissolving an injunction to a judgment at law, rendered on the 15th day of November, A. D. 1839, for $3,575, besides interests and costs, in favor of the said Wanzer and Harrison, against the said Bennet R. Truly; and whereas the said Bennet R. Truly has prayed for and obtained an appeal therefrom to the Supreme Court of the United States, which is granted, on executing this bond, according to law, with the above named Thomas Rull as his security therein.

Now, if the said Bennet R. Truly shall prosecute his said appeal with effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest and costs, as the Supreme Court of the United States shall adjudge in the premises, if the said Bennet R. Truly shall fail to make good his plea, then and in that case this obligation to be void, otherwise to be and remain in full force and virtue.

B. R. TRULY, [SEAL.]
THOMAS RULE, [SALL.]
JOHN H. TRULY. [SEAL.]